Aug 15, 2001

No. 00-799

IN THE

Supreme Court of the United States

THE CITY OF LOS ANGELES,

Petitioner,

v.

ALAMEDA BOOKS, INC.
and HIGHLAND BOOKS, INC.,

Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF OF AMERICAN BOOKSELLERS FOUNDATION FOR FREE EXPRESSION, FEMINISTS FOR FREE EXPRESSION, FREEDOM TO READ FOUNDATION, INTERNATIONAL PERIODICAL DISTRIBUTORS ASSOCIATION, PUBLISHERS MARKETING ASSOCIATION, and VIDEO SOFTWARE DEALERS ASSOCIATION
AS *AMICI CURIAE*
IN SUPPORT OF RESPONDENTS

MICHAEL A. BAMBERGER
Sonnenschein Nath & Rosenthal
1221 Avenue of the Americas
New York, New York 10020
(212) 768-6700
Counsel for *Amici Curiae*

BEST AVAILABLE COPY

TABLE OF CONTENTS

TABLE OF AUTHORITIES i

STATEMENT 2

STATEMENT PURSUANT TO RULE 37.6 2

INTEREST OF *AMICI* 2

SUMMARY OF ARGUMENT 4

ARGUMENT 5

THE EXPANSION OF THE DEFINITION OF "ADULT BOOKSTORES" AND "ADULT BUSINESSES" TO INCLUDE MAINSTREAM RETAILERS HIGHLIGHTS THE IMPORTANCE OF THE REQUIREMENT THAT MUNICIPALITES JUSTIFY RESTRICTIVE ZONING OF SELLERS OF FIRST AMENDMENT-PROTECTED MATERIALS BY EVIDENCE OF THE ALLEGED HARM 5

CONCLUSION 12

APPENDIX A: EXCERPTS FROM SAMPLE ORDINANCES A-1

APPENDIX B: THE *AMICI* B-1

TABLE OF AUTHORITIES

CASES

ACLU v. Johnson, 194 F.3d 1149 (10th Cir. 1999), *aff'g* 4 F. Supp. 2d 1029 (D.N.M. 1998) 4

American Booksellers Ass'n, Inc. v. Hudnut, 771 F.2d 323 (7th Cir. 1985), *aff'd*, 475 U.S. 1001 (1986) 4

American Booksellers Ass'n, Inc. v. McAuliffe, 533 F. Supp. 50 (N.D. Ga. 1981) 4

American Library Ass'n v. Pataki, 969 F. Supp. 160 (S.D.N.Y. 1997) 4

City News and Novelty, Inc. v. City of Waukesha, 531 U.S. 278 (2001) 4

City of Erie v. Pap's A.M., 529 U.S. 277 (2000) 6

City of Renton v. Playtime Theatres, Inc., 475 U.S. 41 (1986) 4, 5, 6, 7

Davis-Kidd Booksellers, Inc. v. McWherter, 866 S.W.2d 520 (Tenn. 1993) 4

Denver Area Educ. Tele. Consortium v. FCC, 518 U.S. 727 (1996) 4

Hart Book Stores, Inc. v. Edmisten, 612 F.2d 821 (4th Cir. 1979) 12

Leech v. American Booksellers Ass'n, Inc., 582 S.W.2d 738 (Tenn. 1979) 4

PSInet Inc. v. Chapman, 108 F. Supp. 2d 611 (W.D. Va. 2000) 4

United States v. O'Brien, 391 U.S. 367 (1968) 6

United States v. Playboy Entertainment Group, 529 U.S. 803 (2000) 4

United States v. X-Citement Video, 513 U.S. 64 (1994) 4

Virginia v. American Booksellers Association, Inc., 484 U.S. 383 (1988) 4

Young v. American Mini Theatres, Inc., 427 U.S. 50 (1976) 6

OTHER AUTHORITY

Edina, Minn., City Code, §850.03 (subd. 3) 8

Fitchburg, Mass., City Code §181-18.2(A)(1) 8

Ill. S.B. 609 (2001-02 General Assembly) 8

Lewisville, Tex., Municipal Code, §17-31(B) 8

Mesa, Ariz.,City Code, §6-16-3(A)(2), -4, -5, -14 10

Minneapolis, Minn., Code of Ordinances, §549.340 8

Rockwall, Tex., City Code, §27-1(2) 8

St. Paul, Minn., Legislative Code, §60.200 8

MISCELLANEOUS

Paul, Linz and Shafer, *Government Regulation of "Adult" Businesses Through Zoning and Anti-Nudity Ordinances: Debunking the Legal Myth of Negative Secondary Effects*, 6 Comm. L. & Policy 319 (2001) 7

In The

Supreme Court of the United States

No. 00-799

THE CITY OF LOS ANGELES,

Petitioner,

v.

ALAMEDA BOOKS, INC.
and HIGHLAND BOOKS, INC.,

Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF OF *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

STATEMENT

American Booksellers Foundation for Free Expression, Feminists For Free Expression, Freedom to Read Foundation, International Periodical Distributors Association, Publishers Marketing Association and the Video Software Dealers Association submit this joint amicus brief in support of respondents, urging that this Court affirm the decision of the court below.[1] This brief is submitted upon written consents of counsel to petitioner and respondents, which are submitted herewith.

STATEMENT PURSUANT TO RULE 37.6

Pursuant to Rule 37.6 of the rules of the Court, counsel for the *amici curiae* discloses that he authored the brief in whole. No person or entity, other than Media Coalition, Inc., a trade association of which *amici curiae* are members or with which they are affiliated, and of which the parties in this action are not members, made a monetary contribution to the preparation or submission of the brief.

INTEREST OF *AMICI*

Amici's members (hereinafter "*amici*") own and operate retail establishments which rent and sell books, magazines, videos, sound recordings, and printed materials of all types, including materials that are scholarly, literary, artistic, scientific and entertaining, or publish, distribute and are consumers of materials sold in such retail establishments. Libraries and librarians represented by the Freedom to Read Foundation provide such materials to readers and viewers, and members of Feminists for Free Expression are involved in the creation of such materials.

---

[1] A description of the *amici* is attached as Appendix B.

Zoning and business regulatory ordinances applying limitations and restrictions based on the sexually explicit nature of First Amendment-protected material sold or displayed by retail establishments are proliferating, justified by the alleged negative impact of such establishments on their communities. As described more fully below, over the years the definitions of "adult use," "adult business," and "adult bookstore" in such ordinances have expanded in scope so that today they often do not comport with the common understanding of those terms. In many cases, as, for example, when defining adult businesses to include retailers deriving merely 10% of their income from material having sexual content, these ordinances apply even to retailers whose predominant product lines have no sexual content, explicit or otherwise.

Amici are mainstream providers of speech in a variety of fora and media. They are concerned that permitting municipalities to pass regulations of "adult" retailers supported only by general assumptions or vague perceptions, by reference to another municipality's assumptions or perceptions, or by reference to the decision of another court with respect to a different community and, often, a substantively different statute, will, as a practical matter, eviscerate the constitutionally-mandated requirement that the municipality have a reasonable basis for believing that the regulated business has negative secondary effects on the community. Applying "adult use" regulations to mainstream bookstores and video stores by stretching definitions beyond their normally understood meaning restricts protected speech in a manner antithetical to the First Amendment, stigmatizes retailers who deal in these protected materials, and chills such retailers from stocking and selling First Amendment-protected mainstream materials which describe or portray sexual matters, either in a fictional or non-fictional context.

In the past, many of the *amici* have brought actions in both federal and state courts to assert the unconstitutionality of laws infringing on First Amendment rights. *See, e.g., Virginia v. American Booksellers Ass'n, Inc.*, 484 U.S. 383 (1988); *American Booksellers Ass'n, Inc. v. Hudnut*, 771 F.2d 323 (7th Cir. 1985), *aff'd*, 475 U.S. 1001 (1986); *ACLU v. Johnson*, 194 F.3d 1149 (10th Cir. 1999), *aff'g* 4 F. Supp. 2d 1029 (D.N.M. 1998); *PSInet Inc. v Chapman*, 108 F. Supp. 2d 611 (W.D. Va. 2000); *American Library Ass'n v. Pataki*, 969 F. Supp. 160 (S.D.N.Y. 1997); *American Booksellers Ass'n, Inc. v. McAuliffe*, 533 F. Supp. 50 (N.D. Ga. 1981); *Davis-Kidd Booksellers, Inc. v. McWherter*, 866 S.W.2d 520 (Tenn. 1993); *Leech v. American Booksellers Ass'n, Inc.*, 582 S.W.2d 738 (Tenn. 1979). They have also filed *amicus* briefs in the Court to advise it as to the impact of its decisions with respect to regulation of sexually frank speech on mainstream creators, producers, distributors and retailers. *See, e.g., City News and Novelty, Inc. v. City of Waukesha*, 531 U.S. 278 (2001); *United States v. Playboy Entertainment Group*, 529 U.S. 803 (2000); *Denver Area Educ. Tel. Consortium v. FCC*, 518 U.S. 727 (1996); *United States v. X-Citement Video*, 513 U.S. 64 (1994).

SUMMARY OF ARGUMENT

City of Renton v. Playtime Theatres, Inc., 475 U.S. 41 (1986), and its progeny dealt with regulation of "adult businesses" as that term is commonly understood, namely businesses that exclude minors and whose inventory is predominantly sexually explicit in nature. The rationale of the Court in permitting such regulation of businesses engaged in the sale, rental or offering of First Amendment protected speech was that such regulation "represents a valid governmental response to the 'admittedly serious problems' created by adult theatres," and therefore was not content-based. 475 U.S. at 54. With the passage of time, however, municipalities have expanded and loosened the definition of

adult businesses so that even mainstream businesses with only a minor portion of their business, inventory or display space devoted to material with sexual content fall within the scope of adult business regulation.

This creeping expansion has resulted in regulation of First Amendment-protected businesses as to which there are no readily apparent negative secondary effects as required by *Renton*, suggesting that the real purpose of such ordinances is not zoning directed at the avoidance of negative secondary effects, but rather is to make it more difficult to distribute, or even to suppress the sale of, these protected works in a given municipality. The First Amendment therefore requires strict adherence to the *Renton/O'Brien* requirement that a municipality rely on evidence that all businesses falling within the definitional scope of the adult business ordinance are likely to cause negative secondary effects in the community. Thus, the more demanding approach of the court below requiring such evidence was correct, and the judgment should be affirmed.

ARGUMENT

THE EXPANSION OF THE DEFINITION OF "ADULT BOOKSTORES" AND "ADULT BUSINESSES" TO INCLUDE MAINSTREAM RETAILERS HIGHLIGHTS THE IMPORTANCE OF THE REQUIREMENT THAT MUNICIPALITIES JUSTIFY RESTRICTIVE ZONING OF SELLERS OF FIRST AMENDMENT-PROTECTED MATERIALS BY EVIDENCE OF THE ALLEGED HARM

The seminal case in the Court's jurisprudence regarding "adult businesses" is *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), which permitted the

imposition of restrictive zoning requirements on theaters exhibiting feature-length adult films. In *Renton*, the Court described the holding of *Young v. American Mini Theatres, Inc.*, 427 U.S. 50 (1976), upon which it relied, "that, at least with respect to businesses that purvey sexually explicit materials, zoning ordinances designed to combat the undesirable secondary effects of such businesses are to be reviewed under the standards applicable to the 'content-neutral' time, place and manner regulations." 475 U.S. at 49. Applying the standards set forth in *United States v. O'Brien*[2], the Court found that the Renton regulation furthered an important or substantial governmental interest, even though Renton had enacted the ordinance "without the benefit of studies specifically relating to 'the particular problems or needs of Renton'." 475 U.S. at 50. The ordinance was upheld on the basis that the City of Renton had relied on the experience of, and studies by, the City of Seattle, only a few miles away. In permitting Renton to so rely, the Court pointedly warned that the studies or experience of others could be relied on *only* "so long as whatever evidence the city relies upon is reasonably believed to be relevant to the problem the city addresses." 475 U.S. at 51-52. Thus the Court required some evidentiary basis demonstrating the likelihood of unwanted secondary effects with respect to the specific businesses regulated.[3]

The Court's warning was prescient and is particularly important in light of the creeping expansion over the last 15

---

2 391 U.S. 367 (1968).

3 Even in *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000), a case involving nude dancing rather than more traditional speech forms such as books, periodicals, or motion pictures, the majority required reliance on "actual experience." 529 U.S. at 300.

years of what municipalities include within the rubric of "adult use." *Renton* and the other early cases involved the zoning of what is generally known, and often self-labeled, as an "adult motion picture theater," "adult bookstore" or "adult arcade." (For example, Playtime Theatres avowedly intended to show only sexually explicit adult films.)

These earlier zoning restrictions reflected a perception that such "adult" motion picture theaters, "adult" bookstores and other "adult" business brought increased crime, decreased property values and other indicators of neighborhood deterioration as a result of suggestive advertising, undesirable clientele, and a general belief that "adult uses" were antithetical to a vibrant and strong neighborhood. Merely having signage proclaiming the "adult only" nature of a retail establishment was perceived to commence and then accelerate the breakdown of a neighborhood. While recently the validity of the studies supporting these assumptions and perceptions has been questioned,[4] courts have generally accepted the studies.

The studies and the apparent understanding of the courts has equated the "adult businesses" to which zoning restrictions applied with the common understanding of what is an adult business, i.e., a business excluding minors whose inventory is predominantly sexually explicit in nature and marketed as such. Regarding such businesses, it may be that municipalities can reasonably rely on relevant common experience to conclude that such businesses cause negative secondary effects.

---

4 *See, e.g.*, Paul, Linz and Shafer, *Government Regulation of "Adult" Businesses Through Zoning and Anti-Nudity Ordinances: Debunking the Legal Myth of Negative Secondary Effects*, 6 Comm. L. & Policy 319 (2001).

More recently, however, municipalities have expanded the definition of the entities covered by "adult use" zoning ordinances so that they include mainstream retailers whose inventory and marketing approach is mainstream, not highlighting the sexual content of some of their book, film or periodical inventory. Municipal ordinances now in effect are not limited to retailers predominantly offering sexually explicit materials. As little as 10% of floor space (Edina, Minn., City Code, §850.03 (subd. 3)) or of stock (Lewisville, Tex., Municipal Code, §17-31(B)), 15% of display, shelf, rack, table or floor area (Fitchburg, Mass., City Code, §181-18.2(A)(1); Minneapolis, Minn., Code of Ordinances, §549.340), 15% of gross revenues or inventory (Rockwall, Tex., City Code, §27-1(2)), 150 square feet of floor space for display (St. Paul, Minn., Legislative Code, §60.200) devoted to material emphasizing the description or depiction of sexual matter qualifies a retailer as an "adult bookstore" or "adult business."[5] These ordinances all regulate far more than what the public considers "adult businesses." In St. Paul, Minnesota, for example, a general bookstore with a section on relationships and sexual manuals exceeding ten feet by fifteen feet is defined and would be regulated as an "adult bookstore." Similarly, in Lewisville, Texas, a mainstream

---

[5] *See* excerpts in Appendix A hereto. Proposed statutes have gone even further. An Illinois bill would classify as an adult bookstore "any establishment with a section or segment devoted" to sexually explicit books, magazines, periodicals or films. As the bill covers such a "section or segment" irrespective of size, any retailer which chooses to segregate sexual-related materials to exclude younger children or even to establish a "sexual relationships" section as part of a topical shelving scheme would be categorized and regulated as an "adult bookstore." Ill. S.B. 609 (2001-02 General Assembly).

retailer carrying one Playboy for every nine Newsweeks would be deemed an adult business.

While, as Shakespeare noted, "a rose by any other name would smell as sweet" because it would still be a rose, calling a rose poison ivy does not make it so. Similarly, statutorily defining a mainstream retailer as an adult business does not make it one, and labeling it such does not mean it would have negative secondary effects on its neighborhood.

Certainly there is no basis for labelling retailers that stock only one sexually related item as adult businesses responsible for the deterioration of their neighborhoods. On the other hand, the traditional adult business — promoted as such, limited to adults, and primarily stocking sexually explicit material — can be presumed to cause negative secondary effects, if the conclusions drawn from the studies discussed in *Renton* and the subsequent cases are accepted. However, many businesses fall in the spectrum between these two extremes. If a municipality desires to regulate as adult businesses retailers falling between the extremes, the evidentiary requirement of *Renton*, which requires a municipality to have some evidence of a reasonable likelihood of negative secondary effects, must be maintained. Otherwise, the regulation becomes, in actuality, a conduct-based regulation, and thus unconstitutional. In order to comply with the *O'Brien/Renton* requirement, the alleged negative secondary effects must justify the full scope of the businesses regulated.

The lower the threshold created by the ordinance, the more intense is the economic pressure on mainstream businesses to cease selling any sexually frank material which might trigger the zoning restriction. A traditional "adult business," with admission restricted to adults, has an inventory which is virtually exclusively of interest to those who would enter such an establishment seeking sexually

explicit material. Thus, in a municipality in which a *Renton*-type zoning ordinance is in effect, the choice for such a business is to geographically comply or to go out of business. Since such a business relies on a consumer base seeking its products, presumably many customers will seek them out wherever they locate.

The situation is different in the case of a mainstream book or video retailer, which carries a wide range of material, most of which has little or no sexual content. It is not an "adult bookstore" in the usual meaning of the term, and does not advertise or promote itself as such. But with thresholds in ordinances as low as 10% of total display area, stock or gross income devoted to material "emphasizing" sexual matters, or, as in Mesa, Arizona, having a significant portion of its gross income in *any one month* derive from the sale or rental of sexually explicit material (City Code § 6-16(D)), a proprietor of a general bookstore or video store must be concerned. The likelihood is that the proprietor will self-censor First Amendment-protected materials to stay well clear of the zoning requirement since location is significant to economic viability.

Nor are these ordinances limited to restricting the location of the retailer (though that, alone, constitutes a significant business restriction). Mesa, Arizona, for example, requires that the proprietor or anyone having a 10% interest in the business be licensed (City Code, §§ 6-16-3,4), requires that employees be licensed as "sexually oriented business employees" (City Code, §6-16-3(A)(2)), limits the hours of the retailer (City Code, §6-16-14), and imposes licensing fees of $500 per establishment and $50 per employee (City Code, §6-16-5). These requirements impose additional business costs on mainstream retailers incidentally carrying sexually-related constitutionally-protected materials, and also stigmatizes them and their employees.

Absent specific evidence to the contrary, a legislative body cannot reasonably assume that a mainstream retailer such as *amici's* members, with a modest selection of sexually frank materials, increases crime and decreases property values in the neighborhood. Reliance on such assumptions demonstrates that such ordinances are not in fact content-neutral, but rather are intended to suppress the availability of one class of First Amendment-protected materials in the guise of zoning regulations to "protect our neighborhoods."

In its prior jurisprudence on this issue, the Court ruled in cases in which the ordinance in question was not so broadly defined as to regulate mainstream businesses simply by calling them "adult." Similarly, *Hart Book Stores, Inc. v. Edmisten*, 612 F.2d 821 (4th Cir. 1979), relied upon by petitioner, involved a statute defining adult bookstores as establishments having a "preponderance" of material emphasizing sexual activities. In the case at bar, when passing the amendment at issue, the City Council apparently had no evidence as to the impact of such a regulation. Instead, they relied on *Hart Book Stores*, a pre-*Renton* decision. In *Hart*, the only evidence mentioned to justify the conclusion that an adult video store and an adult bookstore at the same location would have a greater deleterious impact than either alone was a County Health Department report with respect to unhealthy conditions, separate and apart from whether one or two businesses were carried out at the site. 612 F.2d at 829 fn. 9.

It is thus particularly important to affirm the decision of the court below so that municipalities will understand that they are required to rely on evidence reasonably related to the nature and scope of the ordinances they pass.

CONCLUSION

Amici urge this Court to affirm the decision of the court below to emphasize that municipalities are required reasonably to rely on evidence as to the likelihood of negative secondary effects stemming from the nature of retailers covered by the ordinance they desire to enact.

Dated: July 19, 2001

Respectfully submitted,

Michael A. Bamberger
Sonnenschein Nath &
Rosenthal
1221 Avenue of the Americas
New York, New York 10020
(212) 768-6700

Counsel for *Amici Curiae*

APPENDIX A: EXCERPTS FROM SAMPLE ORDINANCES

1. EDINA, MN, CITY CODE, SECTION 850.03 (SUBD. 3):

The following words, terms and phrases, as used herein, have the following meanings:

* * *

Adult Bookstore. An establishment or business which barters, rents or sells items consisting of printed matter, pictures, slides, records, audio tape, videotape, or motion picture film and either alone or when combined with Adult Motion Picture Rental or Sales and Adult Novelty Sales within the same business premises has either 10 percent or more of its floor area containing items which are distinguished or characterized by an emphasis on the depiction or description of Specified Sexual Activities or Specified Anatomical Areas.

2. FITCHBURG, MA, CITY CODE, SECTION 181-18.2(A)(1):

* * *

(1) ADULT BOOKSTORE or ADULT VIDEO STORE - A business that devotes more than 15% of the total display, shelf, rack, table, stand or floor area, utilized for the display and sale of the following:

(a) Books, magazines, periodicals, or other printed matter, or photographs, films, motion

pictures, video cassettes, slides, tapes, records, CD-ROMs or other forms of visual or audio representations which meet the definition of "harmful to minors" and/or "sexual conduct" as set forth in M.G.L. C. 272 S.31, . . .

3. LEWISVILLE, TX, MUNICIPAL CODE, SECTION 17-31(B):

* * *

Sexually-Oriented Businesses: Include, but are not limited to, any of the following businesses:

(1) **Adult Bookstore:** An establishment having as a substantial or significant portion (10% or more) of its stock and trade, books, magazines and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities", or "specified anatomical areas", or an establishment with a segment or section devoted to the sale or display of such material, or instruments, devices, or paraphernalia which are designed for use in connection with "specified sexual activities".

4. MESA, AZ, CITY CODE, TITLE 6, CHAP. 16, SECTION 6-16-1:

* * *

ADULT BOOKSTORE, ADULT NOVELTY STORE, OR ADULT VIDEO STORE: A commercial establishment which offers sexually explicit material for sale or rental, for any form of consideration, and meets any of one (1) or more of the following criteria:

(A) That has thirty percent (30%) or more of its inventory, stock, or merchandise on hand at any time that is comprised of sexually explicit material; or

(B) That has a substantial or significant portion of its inventory, stock, or merchandise on hand at any time that is comprised of sexually explicit material; or

(C) That derives thirty percent (30%) or more of its gross income for any one (1) calendar month from the sale or rental, for any form of consideration, of sexually explicit material; or

(D) That derives a substantial or significant portion of its gross income for any one (1) calendar month from the sale or rental, for any form of consideration, of sexually explicit material; or

(E) That at any time displays sexually explicit material either in a display area that is thirty percent (30%) or more of its total display area equal to

at least two hundred (200) square feet. For purposes of calculating the floor area, the business premises shall be viewed from above in two (2) dimensions and all areas that are reserved for foot traffic shall be included; or

(F) That displays a substantial or significant amount of sexually explicit material in its display area.

5. MINNEAPOLIS, MN, CODE OF ORDINANCES, SECTION 549.340:

* * *

Adults-only bookstore or video store. An establishment having as a substantial or significant portion of its stock in trade for sale, rental or display, books, magazines, periodicals, films, videos, digital video disks, slides, or other media, which are distinguished or characterized by their principal emphasis on matters depicting, describing or relating to nudity, sexual conduct, sexual excitement or sadomasochism, as defined below, or an establishment with a segment or section devoted to the sale, rental or display of such material which comprises fifteen (15) percent or more of the total sale, rental or display area of such establishment, or five hundred (500) square feet, whichever is less. An adults-only bookstore or video store also shall include an establishment that offers films, videos, digital video disks, slides or similar media for viewing on premises.

6. ROCKWALL, TX, CITY CODE, SECTION 27-1(2):

* * *

(2) *Adult bookstore* or *adult video store* means a commercial establishment which as a principal business purpose openly advertises or displays or offers for sale or rental for any form of consideration any one or more of the following:

(a) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slices, or other visual representations which depict or describe "specified sexual activities" or "specified anatomical areas:; or

(b) Instruments, devices, or paraphernalia which are designed for use in connection with "specified sexual activities."

As used herein, "principal business purpose" shall include any business activity which accounts for fifteen (15) per cent or more of the following: (I) gross revenues of the business; (ii) floor area of the business; or (iii) inventory.

7. ST. PAUL, MN, LEGISLATIVE CODE, SECTION 60.200:

* * *

Adult bookstore. Adult bookstore means a building or part of a building used for the barter, rental or sale of a significant portion of items consisting of (1) instruments, devices or paraphernalia which are designed for use in connection with "specified sexual activities," or (2) printed matter, pictures, slides, records, audio tape, videotape, motion picture film, or CD Roms or another form of recording if such items are distinguished or characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas." Significant portion of items" shall mean more than fifteen (15) percent of usable floor area or more than one hundred fifty (150) square feet of floor area used for the display and barter, rental or sales of such items. No obscene work shall be allowed.

APPENDIX B: THE *AMICI*

The American Booksellers Foundation for Free Expression ("ABFFE") was organized in 1990. The purpose of ABFFE is to inform and educate booksellers, other members of the book industry, and the public about the dangers of censorship and to promote and protect the free expression of ideas, particularly freedom in the choice of reading materials.

Feminists For Free Expression (FFE) is a national, not-for-profit organization of diverse feminist women and men, many of whom produce expressive materials, who share a commitment both to gender equality and to preserving the individual's right and responsibility to read, view, and produce such materials free from government intervention. Since 1992 it has worked actively to oppose the misconception that censorship may sometimes be in the interest of women and others who feel unequally treated by society, believing that the goal of equality is inextricably linked with the values enshrined in our Constitution's free speech clause.

The Freedom To Read Foundation is a not-for-profit organization established in 1969 by the American Library Association to promote and defend First Amendment rights, to foster libraries as institutions that fulfill the promise of the First Amendment for every citizen, to support the right of libraries to include in their collections and make available to the public any work they may legally acquire, and to establish legal precedent for the freedom to read of all citizens.

The International Periodical Distributors Association is the trade association for the principal national periodical distributors engaged in the business of distributing or arranging for the distribution of paperback books and

periodicals to wholesalers throughout the United States for ultimate distribution to retailers and the public.

The Publishers Marketing Association (PMA) is a nonprofit trade association representing more than 2,000 publishers across the United States and Canada. PMA represents predominantly nonfiction publishers and assists members in their marketing efforts to the trade.

The Video Software Dealers Association (VSDA) is the trade association for the home video industry. It represents more than 2,000 member companies in North America and 22 countries worldwide, including retailers of motion picture videos and video games, the home video divisions of major and independent motion picture studios, video game and multimedia producers, and other associated businesses that comprise the home video entertainment industry. VSDA retailer members sell and rent both non–sexual and sexually oriented material and thus may be subject to "adult business" ordinances.